

The Reaction of the Italian Tax System to the COVID-19 Pandemic among European Constraints and Constitutional Values

Francesco Cannas*

This article aims to provide the non-Italian reader with an overview of the Italian perspective on the tax interventions that were adopted during the pandemic and those that will have to be adopted in the future to address the consequences they have left behind. It is not an article listing or explaining the measures that have been taken by Italy, however, it delineates the main tax issues raised by the COVID-19 pandemic from the perspective of constitutional and EU law. The purpose is strictly comparative and is intended to provide the foreign reader with an opportunity to draw points of reflection and comparison.

Keywords: Italy, pandemic, Constitution, extraordinary tax measures, EU law, state aid, digital companies, offer, supply

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* Post-doctoral Researcher at the University of Hasselt (Belgium), Senior Lecturer in Tax Law at the Monash University (Kuala Lumpur campus) •
✉ francesco.cannas@uhasselt.be • ORCID: 0000-0002-1496-8560

Introduction

The first two decades of this century have not been easy for our legal systems. If the European dimension is examined, a series of ‘epochal’ crises can be observed that, although they have not caused the devastation of the world wars that Europe suffered in the last century, have had repercussions that are by no means temporary. These are mass migrations, terrorism, and the financial crisis of 2008 followed, finally, by the COVID-19 pandemic that is still being experienced. In particu-

lar, the latter two created a series of shocks that put a strain on public finances with the result that targeted adjustments to tax rules often had to be made almost ‘overnight.’ In a way, these are also fiscal crises.¹

Nevertheless, they are very different from each other. In 2008, the ‘tax factor’ even contributed to the crisis, e.g., the rules that incentivised stock options and encouraged short-term risk-taking

¹ For a historical perspective on the reaction of the tax system to war, see also Einaudi (1927).

mainly aimed at maximising managers' personal income, destabilising the market; those that facilitated the deduction of interest on mortgages and the issuing of securitisation instruments, giving rise to huge masses of debt from the outset destined to remain unpaid; and the favourable regimes applied to tax havens, often home to companies issuing and managing 'toxic financial products' (Melis, Rasi, 2020, p. 1372 et seq.).

As a consequence, at that time, an initial action taken by the lawmakers was to attempt to resolve these distortions. The scenario around today's crisis is very different, and issues such as moral hazard are now excluded from the debate. Today, public opinion does not perceive specific businesses (i.e., banks) as the cause of the crisis and, perhaps, there is a greater consensus on the tax and economic measures to be taken.

This short article plans to provide the non-Italian reader with an idea of how the Italian tax system reacted to the COVID-19 pandemic. However, the intention is not to list the measures taken in the emergency situation by the government but rather to report what have been the main uncertainties of Italian legal scholars about these measures. In particular, after briefly examining the macroeconomic context and what might theoretically be the most suitable measures for a situation like the present one, the author analyses some aspects of the Italian and European constitutional frameworks.

The purpose of this article is not to conduct a comprehensive analysis since this would require the publication of a book. The objective is to analyse the main tax issues raised by the COVID-19 pandemic, from the perspective of constitutional and EU law.

Current macro-economic context

Free market economies are strongly characterised by cyclical trends: there are upward trends until demand is saturated, after which there is usually a downward slope of the supply curve which, hav-

ing reached a certain level, begins to rise again as it is driven by new demand.² In theory, during positive trends, there should be positive externalities such as an increased level of employment.

Periods of decline can be elements of the ordinary course of economic life but also result, as being experienced at the moment, from exceptional events. In the case of Italy, for example, it is commonly affirmed by scholars that the devastation of World War II laid the foundations for the so-called 'economic boom' of the 1950s and 1960s. The enormous challenge for tax policymakers is to identify each time that the economic and legal instruments that are more suitable to cause the trend reversal and stimulate the recovery as each crisis is an individual case (Contrino, Farri, 2020, p.18).

Compared to the WWII aftermath, for example, the current pandemic crisis will not have an exact day when it will end; there will be no clear cut-off point. However, it will probably die out gradually and, for a while, people (and policymakers) will live in fear of its return. Therefore, there is a reason to fear that recovery, if any, will be more gradual. Again, compared to the WWII aftermath, the situation of Italy shows some major differences. On the one hand, unlike at that time, the country does not need to rebuild a network of infrastructure that has been destroyed. On the other hand, the State (i) cannot rely on its own monetary policy, specifically, one of the most effective instruments to address the economy as it was transferred to the European level; nor on (ii) its own custom duties policy as is currently transferred to both the European and WTO level; and is immersed in a context of exasperated globalisation that has influenced many companies to transfer production abroad or at least to significantly integrate their value chain with players located in other parts of the globe. As a result, even though the Italian Constitution and its underlying principles are unchanged, many of the tools used at that time to build the economic boom are no longer available today.³

² With regard to this, see, among others, Pella (1938); Sylos Labini (1970).

³ On this point see, among others, Carli (Ed.) (1977); Cardini (Ed.) (2007).

Considering the completely different picture, the only general lesson that can be learned from that period is that the State must play a central role in the recovery. According to some scholars,⁴ the government should ensure that demand is adequately supported so that it subsequently supports supply and businesses, thus creating positive externalities such as a higher level of employment and greater tax revenues. They effectively describe the (new) equilibrium among different powers as follows: on the one hand, the Euro-monetary policy and system does not correspond entirely with the European Union, which causes a certain lack of coordination in the European policies. In addition to that, none of the international organisations to which economic policy-making powers were transferred (namely, the EU and WTO) are fully independent from the Member States and, therefore, able to elaborate autonomous and truly supranational-focused policies. The ultimate result is that Member States must still establish the measures to overcome the economic crisis but under the possibility for other Member States to exercise some forms of pressure (e.g., to exercise their veto power) and without any real guarantee that appropriate parallel measures will be adopted at the international level.

From this perspective, states must think from an individual perspective and implement their own policies to overcome the current economic challenges with the note that, if foreign aid were to arrive in the future (as was the case for the so-called Marshall Plan after WWII), it should certainly be welcomed even if it cannot be relied upon in advance. Italy shall plan interventions as soon as possible based on the financial, legal, and tax powers that it still possesses and have not been transferred to a supranational level. This should stimulate the internal demand for goods and services (it must be emphasised that its economic power is not strong enough to stimulate the foreign demand as the United States did in the WWII aftermath with the so-called Marshall Plan).

⁴ See again Contrino, Farri (2020).

Measures to deal with a ‘sudden pandemic’

Support for supply by businesses

In principle, these measures have the advantage of giving time to internal demand to organise itself. In fact, an immediate recovery in domestic demand that is not matched by adequate supply does not actually result in an economic recovery but is likely to simply result in benefiting foreign supply.

- Financial aid: some sort of financial support, i.e., securing liquidity for businesses, is crucial both in the pandemic time and in the aftermath until full economic recovery is achieved. If businesses lacked the liquidity to meet their fixed costs, the country’s entire production system would quickly collapse. With this in mind, in addition to fiscal measures to support the injection of liquidity, there is a need to ensure that banks and financial institutions assist companies, e.g., through state-guaranteed loans. This implies, among others, rapidly changing banking regulations and departing from traditional standards for measuring the financial soundness of banks and financial institutions.⁵
- Tax aid: these measures are closely related to those seen in the previous point. At the time of the pandemic, fiscal policy must first be managed in such a way as to ensure liquidity for businesses, for example, by suspending at least part of tax collection. In the subsequent phase, fiscal policy must be oriented towards supporting the upswing of the normal functioning of production cycles. Three possible areas of intervention have been identified.⁶ As a preliminary point, simply stated, it must be acknowledged that, in contrast to when things are going well and

⁵ In a broad sense, on this point, see also Ingraio (2020)..

⁶ See also Boffano (2020); Carpentieri (2020)..

the State takes a share of businesses' profits by imposing taxes, if things are going badly, the State must accept that tax revenues will be lower. It shall even agree to go so far as to actively support businesses through temporary tax credits or liquidity injections.⁷

One of the main problems that scholars⁸ have identified with these mechanisms is that there is a risk of keeping productive sectors alive that have no future in the post-pandemic era. An example is restaurants. It is proper to support this sector since many have been damaged by lockdowns and curfews imposed by the authorities. However, there is also a risk of wasting resources, since the introduction of smart-working is likely to change the eating habits of part of the population and, for example, many will eat less frequently in restaurants that are near offices.

Secondly, action must be taken to safeguard and stimulate those positive externalities, such as employment, which support domestic demand and thus help domestic supply. From a tax perspective, there is a need to lighten the tax burden on all of those taxes that affect labour, for example, by either reducing and/or postponing social payments until after the pandemic is over.

Thirdly, action is needed to foster the competitiveness of Italian companies and professionals in the international market. In recent years, this has primarily been done indirectly, especially through tax credits for research and development, however, the time has probably come for stronger measures and direct support. One could think, for example, of support for companies that export and are able to secure the opening of new plants in a country.

- Organisational aid: after WWII, Italy experienced several decades of economic boom and became one of the world's major economic powers. This was also due to intense direct State intervention in the economy.⁹ In

⁷ See also Marini (2020)..

⁸ See again Contrino, Farri (2020).

⁹ One of the instruments of state intervention in the economy was the IRI (*Istituto per la ricostruzione industri-*

recent decades, however, the idea that the State 'should stay out of the economy' and leave the initiative to the private sector has been consolidated. With public intervention dismantled, Italy has no longer had an effective industrial policy. It has often only attempted to merely defend itself by counteracting some of the consequences of globalisation, for example, by trying to prevent some factories from moving abroad. However, there has been a complete lack of an organic and effective plan to exploit the opportunities offered by the current market situation. Therefore, it is necessary to identify what the country's future lines of development might be and to intervene in sectors that can forge ahead in this direction. This can be accomplished by both supporting businesses and by organising an education system that, in addition to fulfilling the function of educating future citizens and developing them as human beings, helps them to be useful in these productive sectors.¹⁰

In addition to this, it would be necessary, without having the possibility of copying what China is doing with the so-called New Silk Road, to enter into more systematic agreements for the promotion of products 'made in Italy' all around the world.

Support for consumers' demands

An increase in domestic demand is of paramount importance since, without it, it is not possible to adequately support domestic supply (and an increase in supply alone would bring little or no

ale – institute for industrial reconstruction). Established in 1933, during fascism, it progressively expanded its areas of intervention after WWII and became the core of public intervention in the Italian economy. In 1980, the IRI was a group of approximately 1,000 companies with more than 500,000 employees. It was, in its time, one of the largest non-oil companies outside the United States of America.

¹⁰ More in general, see also Yang (2020)..

benefit). With regard to this, two possible types of measures are conceivable:

- Tax measures: in the area of income tax, domestic demand can be supported by articulating a mechanism of tax credits for the purchase of goods and services produced in the country (in the case of Italy, this should be coordinated with the EU rules). In addition to that, at least a portion of the social grants (e.g., the so-called food stamps) disbursement may be correlated with the purchase of goods and services produced in the country.¹¹
- Welfare measures: support for domestic demand is closely linked to the population's standard of living. This can be an opportunity to affirm social justice that is one of the pillars of the Italian legal system and of our society. In this context, it is important to ensure that every citizen and every family has a decent lifestyle and can meet all of their needs. In this way, even if this is of secondary importance, there will be significant domestic demand.¹²

Constitutional dimension of interventions to support the country during the pandemic

The Italian Constitutional Chart¹³ does not contain any rule specifically addressing the relationship between taxation and emergencies. The only article that vaguely refers to this concept is article 81, paragraph 2, under which 'exceptional events' may justify the use of debt in order to cope with the adverse economic cycle subject to authorisation by the Parliament with an absolute majority.

This procedure was used during the COVID-19 pandemic period with decree-law 18/2020¹⁴

¹¹ See also Carinci (2020), p. 1517; Coppola (2020), p. 907.

¹² In general, see also Melis (2020).

¹³ The Constitution of the Italian Republic (*Costituzione della Repubblica Italiana*).

¹⁴ Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori

when Italy was faced with a situation never seen before in recent history. Under the Italian legal system, in fact, the legal instrument of the decree-law is commonly relied upon for the regulation of tax matters in emergency situations. It is the instrument generally conceived by constitutional law to deal with situations of necessity and urgency, but it is noteworthy that, under article 4 of the Charter of Taxpayers' Rights,¹⁵ which is an ordinary law, it cannot be used to "establish new taxes or enlarge the personal scope of application of the existing ones." Stated otherwise, the Charter intends to limit the possibility for the government to take advantage of the swiftness of this legal instrument and of the fact that it has immediate force of law since parliamentary scrutiny occurs at a later stage.

The relationship between article 77 of the Constitution that establishes the law-decree instrument and article 4 of the Charter of Taxpayers' Rights is a complex one since granting too much weight to an ordinary law would result in limiting a governmental power provided for by the Constitution. The Italian Supreme Court recently ruled that¹⁶ "the provisions of the Charter of Taxpayers' Rights, which are merely guiding criteria for the Court, when applying and interpreting tax rules, including those previously in force, in order to resolve any hermeneutical doubts, do not, in the hi-

e imprese connesse all'emergenza epidemiologica da COVID-19. *Decreto-Legge 17 marzo 2020* (18).

¹⁵ Disposizioni in materia di statuto dei diritti del contribuente. *Legge del 27/07/2000* (212).

¹⁶ The translation proposed in the manuscript is the author's (informal) one. See, M. Fraternali Vitaletti (2009). 'La divisione, tra diritto tributario ed interpretazione giurisprudenziale'. *Cass. 6 febbraio 2009* (3440): "le disposizioni dello statuto del contribuente, che costituiscono meri criteri guida per il giudice, in sede di applicazione ed interpretazione delle norme tributarie, anche anteriormente vigenti, per risolvere eventuali dubbi ermeneutici, non hanno, nella gerarchia delle fonti, rango superiore alla legge ordinaria, con la conseguenza che esse non possono fungere da norme parametro di costituzionalità, né consentire la disapplicazione della norma tributaria in asserito contrasto con le stesse." See also Marongiu (2008), p. 8271.

erarchy of legal sources, rank higher than the ordinary law, with the result that they cannot be considered as parameters of constitutionality, nor permit the disapplication of the tax rule that are in conflict with them.”

From a theoretical standpoint, governmental tax measures aimed at facing an emergency period are enacted whereby the law-decree can be divided into two groups: (i) tax incentives; and (ii) tax levies. In fact, on the one hand, it is possible to grant a favourable tax treatment to activities that help overcome the crisis. On the other hand, it is also possible to increase taxation for those activities that take advantage of the crisis.

The law-decree no. 18/2020 enacted by the Italian government is attributable to the first of the two mentioned categories as it contains rules such as: a tax credit related to the sanitation of premises, tax relief for donations made in support of activities to combat the epidemic emergency, etc. From a supranational perspective, it is relevant to note that, under article 107, paragraph 2, letter b), of the Treaty on the Functioning of the European Union, EU law allows the compatibility of state aid with the internal market if granted to “remedy a serious disturbance in the economy of a Member State,” which is doubtlessly applicable to the conditions created by the COVID-19 pandemic.

As to the second of the categories mentioned, it includes measures that are much more sensitive from both a legal and a political perspective. In fact, from a legal standpoint, it concerns two founding principles of our tax system, specifically, the ability-to-pay and equality. While there is no doubt that tax incentives are compatible with these two principles, to draw a conclusion with regard to the tax levies is much more difficult.

According to the Italian Constitutional Court “tax incentives should be able to find ground and justification in values that are compatible with the principle of the ability-to-pay”¹⁷ and “the per-

¹⁷ The author’s translation from the following judgement: Corte cost. 6 dicembre 2006, no. 428. The wording translated is: “l’agevolazione dovrebbe poter trovare sostegno e giustificazione in valori componibili con il principio di capacità contributiva.”

son benefiting from the favourable regime enjoys the relief because the legal system considers the reasons for supporting and incentivising a given activity to be prevailing over the reasons for the uniform levy.”¹⁸ In addition to that, it must be considered that, in unprecedented times such as those of the COVID-19 pandemic, there is also a solid argument according to which, due to the wealth shifts caused by the resulting economic crisis, the qualitative criteria for applying this principle may change (Della Valle, 2020, p. 1513). In fact, there are economic sectors that were heavily penalised by the lockdowns, such as catering, and others that saw their profits rise, such as streaming websites. Legal scholars advocating from this theory (Contrino, Farri, 2020). affirm that, in situations such as the current one, the ability-to-pay principle and that of benefit are not incompatible. They underline that, according to the Italian Constitutional Court, a differentiation of tax rates based on the economic sector to which the taxpayer belongs “is fully within the discretion of the Legislator, if supported by not unreasonable reasons of economic and redistributive policy.”¹⁹ The consequence is that, at a time of deep crisis, there is no reason why certain taxpayers who have benefited should not ‘pay more than others’.

History provides some examples of how, in recent decades, Italy has imposed extraordinary *una tantum* taxes in crisis situations. In 1992, for example, the government chaired by Giuliano Amato introduced a wealth tax on bank accounts and deposits owned by Italian citizens (‘redeemable,’ namely, a ‘forced loan’) either in Italy and abroad in order to avoid the default of the public debt,

¹⁸ The author’s translation from the following judgements: Corte cost. 159/1985 e 119/1999. “il soggetto che gode del regime di favore fruisce della agevolazione perché l’ordinamento ritiene prevalenti le ragioni del sostegno e dell’incentivo verso una determinata attività rispetto alle ragioni del prelievo omogeneo.”

¹⁹ Judgement: Corte cost., 11 gennaio 2005, no. 21, “rientra pienamente nella discrezionalità del legislatore, se sorretta da non irragionevoli motivi di politica economica e redistributiva.”

which was considered legitimate by the Constitutional Court.²⁰

It is also possible to add one further element into this analysis based on constitutional law. Taxes are not only an instrument for the State to collect resources that guarantee its proper functioning. They are also a means to guarantee the implementation of (substantial) equality under article 3 of the Constitution (Tesauro, 2017), which mandates that the Republic shall “remove the economic and social obstacles that restrict the freedoms and equality, thus preventing the full development of the human being.”²¹ As a consequence, an excessive imbalance between the economic conditions of citizens created by the crisis may justify a targeted additional tax levy to bring society (at least partially) back to a more balanced situation.

Role of the EU’s legal system

The EU Member States were in a very difficult situation in attempting to overcome the COVID-19 pandemic. Although the current situation is very different from that of the world wars that the continent experienced in the last century, the exceptional nature and seriousness of the situation has led each state to suddenly ‘withdraw into itself’ to ‘think first and foremost’ of its own citizens, and to adopt a unilateral approach that has sometimes become almost confrontational (Fabri, 2020, p. 39). Even within the European Union, each Member State has, in fact, dealt with the emergency widely independently of both EU institutions and other Member States, often simply ‘communicating’ decisions to the others once they have been taken. One could think, for example, of the unilateral suspension of the Schengen system and even of the not entirely ‘proper’ conduct of

those Member States that have tried to seize sanitation material destined for other states in transit through their territory (Petroni, 2020, p. 161).

Parallel to this (understandable) ‘individualistic drive,’ there has also been a realisation on the part of many stakeholders that, without a certain level of European solidarity between Member States and an appropriate set of legal instruments, it will be very difficult to stem the long-term damage caused by the COVID-19 crisis. In this sense, the European Union considered it appropriate to temporarily suspend (either *de iure* or *de facto*) certain regulatory schemes and to create and enhance certain credit lines (e.g., the ESM, the SURE, etc.). To use sporting slang, this match will be a very difficult one, since in some Member States, including Italy, these instruments are viewed unfavourably by a large portion of the public opinion. In fact, after the individualistic drives that have been mentioned, it will be necessary to explain where the convenience lies from accessing these credit lines rather than seeking liquidity on the market or outside the Union.²²

From a legal standpoint, considering the current framework and leaving the treaties unchanged, the leeway at the European level is rather narrow. In fact, *vis-à-vis* the so-called ‘no bail-out clause’ under article 125, paragraph 1, TFEU,²³ only two solutions are theoretically possible: (i) the ESM, under article 136 TFUE which, however, requires close monitoring by international institutions (the so-called ‘Troika’); and (ii) the financial assistance that may be granted to a “Member State which is in difficulties or is seriously threatened with severe difficulties caused by ... exceptional occur-

²² See also Perrone (2020).

²³ “The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.”

²⁰ These are the details of the mentioned judgement: Corte cost. 4 maggio 1995, no. 143. Commented by Falsitta (1995), p. 476. On the topic, also see more in general, Viotto (2017).

²¹ Art 3 of the Italian Constitution: “rimuovere gli ostacoli di ordine economico e sociale, che, limitando di fatto la libertà e l’uguaglianza dei cittadini, impediscono il pieno sviluppo della persona umana.”

rences beyond its control” under article 122(2) TFEU. While the former has been available permanently since 2013, the latter, like the so-called Recovery Fund, requires a high-level political agreement with all of the problems this entails given the current fragility of the ‘European project’.

It is noteworthy that, regardless of the effectiveness of the measures that have been adopted or are currently under discussion or negotiation and regardless of the technical-legal instrument used (e.g., national sovereign or ‘shared’ public debt), what is certain is that any and all of the interventions will increase the deficit and debt of (at least some of) the Member States. Consequently, regardless of how the political negotiations proceed, sooner or later, States will be faced with the need to find resources, and the ‘tax leverage’ is likely to be crucial.

Some scholars (Pepe, 2020) have pointed out that the current pandemic has overturned many of the paradigms of our reality, giving fiscal policy an almost strategic role for States. Usually, when referring to the ‘strategy of a State’ one alludes to the identification of its basic needs and what is necessary for its survival and distinguishes it from tactics that consist of the ‘moves’ made to satisfy the identified needs. In other words, the strategist does not choose but recognises something that exists, whereas the tactician puts actions into place. In this context, tax collection becomes almost a primary need of the State and shall be considered as such since, without it, the State will not be able to prove itself a reliable debtor and would, therefore, risk collapsing within a very short period of time.

However, this does not mean that States can simply raise the existing tax burden as this would simply risk undoing the support measures that were implemented during the crisis. It will be necessary to change the tax system radically so that the tax burden can be shifted to those who suffered least economically during the pandemic and collection can be efficient and smooth. For example, one could think of a series of taxes to be paid in either a fixed amount (lump taxes) or in a fixed percentage applied to an easy-to-calculate tax base (flat taxes).

Instead of affecting individuals and small local businesses, this remodelled tax system should necessarily pursue the very substantial profits made by MNEs in this period. This will not be easy, however, it is certainly fair since their ability to pay is certainly less impaired than that of other businesses as well as being politically accepted by a large part of public opinion.

Finally, always from a European standpoint, due consideration will have to be given to the state aid rules. Since it will not be possible to distribute what Americans call ‘helicopter money’ in the future, some aid will have to be selective and, therefore, pass the test of the European rules (Fransoni, 2020). The first question that needs to be asked is whether the aid granted by Member States to deal with the COVID-19 crisis is actually state aid under article 107 TFEU. It is necessary to understand whether this specific aid falls within the scope of paragraph 1 that prohibits aid with certain characteristics (i.e., granted to certain undertakings or the production of certain goods through state resources and which distorts competition) or within the exception provided for in paragraph 2, letter b) which would make them compatible regarding the pursued objectives.²⁴ This is very important because the answer outlines the role that the European institutions should play in respect to this matter.

Although there seems to be little doubt that such aid can be covered by the expression “aid to make good the damage caused by natural disasters or exceptional occurrences,” the European Commission has always adopted an extremely restrictive approach in this realm. Both in the checklist drawn up in 2013 and in article 50 of the Regulation (EU) n. 651/2014,²⁵ emphasis is placed on calamitous events of geological or meteorological origin: “Aid schemes to make good the damage caused by earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions

²⁴ More in general on this issue, see also Attinà, Natalicchi (2007); Cantaro (2020).

²⁵ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

and wild fires of natural origin shall be compatible with the internal market within the meaning of Article 107(2)(b) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty.” In addition to that, some scholars²⁶ point out that even considering the biological and health emergency as an exceptional occurrence within the scope of the paragraph, it could be interpreted in such a way as to ensure only the compatibility of aid granted to those who have actually suffered damage.²⁷

In the author’s opinion, there is no doubt that it is necessary to adopt an interpretation of the article that is as broad and extensive as possible and to include the economic circumstances arising from COVID-19 in the broad sense. This is, in fact, acceptable from a legal point of view since the expression “make good of the damage ... caused by exceptional occurrences” does not preclude this interpretation. It is also absolutely desirable from a political perspective since what is at stake in this situation is not only the solidity of the Union but also the model of the European welfare state that has guaranteed, in recent decades, an extraordinary economic and human development of the continent.

Conclusion

To quote the reasoning of Franco Gallo (Gallo, 2020; Severino, 2020, p. 87), Professor Emeritus of tax law and former Minister for Public Finances of the Republic of Italy, it is necessary to coordinate the reforms required by this period of emergency with some structural reforms that the State has needed for years in order to correct certain distortions and implement the principle of solidarity laid down in the Constitution.

²⁶ Fransoni (2020).

²⁷ In general, see also F. Capriglione and A. Sacco Ginevri (2015).

The historic turning point imposed by the pandemic can be an opportunity to promote a better distribution of wealth and to rebalance the relationship between the central State and the regions that are responsible for the healthcare system and have, in many cases, demonstrated their inadequacy to deal with the current emergency context. Moreover, it can and should be an opportunity to correct the distortions of so-called ‘digital capitalism,’ i.e., the economic system that is emerging in which a few large digital giants are almost more powerful than states and pay almost no taxes.

In redesigning the tax system while considering future society, it is necessary to take into account the fact that the digital revolution the world is experiencing and that has accelerated dramatically during the pandemic as many activities have gone online generates serious concerns about rising unemployment. This will also bring with it a sharp reduction in consumer purchasing power.

It is becoming necessary to govern a partial de-globalisation without, however, renouncing the advantages that can be derived from the technological progress of artificial intelligence, automation, etc.

The COVID-19 pandemic is forcing society, in other words, to take into due consideration the fact that there can be no ‘acceptable capitalism’ without a strong system of public services and a strong protection of collective goods such as health, education, environment, culture, etc. It will, therefore, be necessary to rebalance the relationship between public and private power as well as to rethink the way society produces and consumes.

In conclusion, this cannot be reduced to simply taxing technology as such but must necessarily lead to a shift of the tax burden from households to large companies and ‘high-net-worth individuals’ that are benefiting enormously from the current situation.

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· CONTACT ·

analysesandstudies@sgh.waw.pl · analysesandstudies.sgh.waw.pl · casp.sgh.waw.pl